

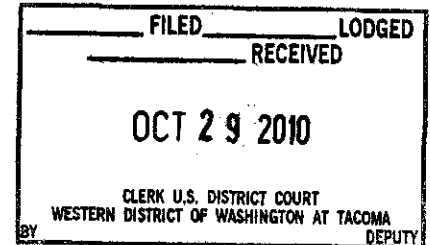
THE HONORABLE ROBERT J. BRYAN

RICHARD L. PHILLIPS, WSBA #6252
ROMAN S. DIXON JR. WSBA #36369
THE GAITÁN GROUP LLC
3131 Elliott Avenue, Suite 700
Seattle, WA 98121
(206) 346-6000

Attorneys for Defendant
FEDERAL DEPOSIT INSURANCE CORPORATION,
as Receiver for Westsound Bank

Attorneys for Defendants Jerry Becker,
Mary Ann Becker, and JFB Properties LLC

Edward L. Mueller, WSBA # 264
Mueller & Associates Inc. P.S.,
2050 112th Avenue N.E., Ste 110
Bellevue, WA 98004
Ph. # (425) 457 7600
Fax # (425) 457 7601
e-mail: elm@muellerlawfirm.net



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FEDERAL DEPOSIT INSURANCE
CORPORATION, as receiver for
WESTSOUND BANK,

Plaintiffs,

v.

JERRY F. BECKER, individually; MARY
ANN BECKER, individually; the marital
community composed of JERRY F.
BECKER AND MARY ANN BECKER;
and JFB PROPERTIES LLC, a
Washington Limited Liability Company,

Defendants.

NO. CV09-5476-RJB

JOINT PRETRIAL ORDER



09-CV-05476-ORD

JOINT PRETRIAL ORDER
(NO. C09-5476-RJB) - 1

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SEATTLE, WASHINGTON 98121
(206) 346-6000

I. JURISDICTION

Jurisdiction is vested in this court by virtue of 12 USC §§ 1819(b)(2)(A) and (B).

II. CLAIMS AND DEFENSES

At trial, the Federal Deposit Insurance Corporation as Receiver for Westsound Bank ("FDIC") will present evidence of the amount due on the four claims for which summary judgment was granted by the trial court judge in Kitsap County Superior Court. In addition, the FDIC will pursue a claim for fraudulent transfer per RCW 19.40.041, 19.40.051.

At trial, the defendant will present the following affirmative defenses:

(1) Westsound Bank's, and the FDIC's failure to mitigate damages.

III. ADMITTED FACTS

The following facts are admitted by the parties:

1. Westsound Bank ("the Bank") loaned money to Jerry and Mary Ann Becker on four separate loans.
2. The state trial court granted summary judgment to the Bank on those notes by memorandum opinion dated April 24, 2009.
3. This court denied the defendants' Motion to Reconsider by Order dated August 23, 2010.
4. Prior to May 27, 2008, Jerry and Mary Ann Becker owned a parcel of real property located at 514 Sheridan Road, Bremerton, WA.
5. Prior to May 27, 2008, Jerry and Mary Ann Becker owned a parcel of real property located at 516 Sheridan Road, Bremerton, WA.
6. On or about May 27, 2008, Jerry and Mary Ann Becker transferred property located at 514 and 516 Sheridan Road, Bremerton WA, to JFB Properties LLC.
7. Jerry F. Becker is the Manager of JFB Properties, LLC.

8. The Members of the LLC are Jerry F. Becker and Mary Ann Becker.
9. At the time of the transfers Jerry and Mary Ann Becker were indebted to Westsound Bank on loan #2019923305, which originated as loan #2019909189, in the principal amount of \$467,000.
10. At the time of the transfers Jerry and Mary Ann Becker were indebted to Westsound Bank on loan #2019013644 in the principal amount of \$503,450.
11. At the time of the transfers Jerry and Mary Ann Becker were indebted to Westsound Bank 2007090500, which originated as loan 2019910914, in the principal amount of \$157,982.
12. At the time of the transfers Jerry and Mary Ann Becker were indebted to Westsound Bank on loan 2007000000, which originated as loan 2019910922, in the principal amount of \$158,790.
13. At the time of the transfers the loans were all in default.
14. The transfers were made without value.

The Plaintiff contends as follows:

1. Jerry and Mary Ann Becker owe a total of \$582,857.41 on note 1.
2. Jerry and Mary Ann Becker owe a total of \$598,914.24 on note 2.
3. Jerry and Mary Ann Becker owe a total of \$230,749.47 on note 3
4. Jerry and Mary Ann Becker owe a total of \$233,244.55 on note 4.
5. The transfer of the properties at 514 and 516 Sheridan Road, Bremerton WA from Jerry and Mary Ann Becker to JFB Properties LLC were fraudulent as to Westsound Bank and its successor in interest, the FDIC as Receiver for Westsound Bank, within the meaning of RCW 19.40.041, 19.40.051.

1 The Defendants contend as follows:

- 2
- 3 1. One of the Becker loans was a personal consumer loan with construction loan provisions,
- 4 and the other three were commercial type loans, one of which was originally a construction
- 5 loan, and two of which were land development loans. All four loans were later converted to
- 6 long term amortized installment loans evidenced by notes with early call or payoff dates that
- 7 would require either sale of the properties securing the loans or refinancing to avoid default.
- 8 It is the four amortized notes that are the part of the subjects of this lawsuit.
- 9 2. Westsound Bank failed to mitigate damages by failing to complete non-judicial
- 10 foreclosure sales in 2008 when the properties were in reasonable condition; but ceased the
- 11 non-judicial foreclosure procedures, and instead instituted lawsuits on the four notes so as to
- 12 increase the damages to Defendants Becker without justification.
- 13 3. Westsound Bank failed to mitigate damages by refusing a proffered short sale on the
- 14 Indianola house when it was in good condition, and would have paid by fair the major part of
- 15 the loan on that property, leaving only a more manageable deficiency, but the Bank refused
- 16 the sale after it had originally solicited such a mitigation strategy with Jerry Becker.
- 17 4. The FDIC has continued the policies of Westsound Bank with respect to failure to
- 18 mitigate damages, and instead has engaged in a policy of liquidating the assets related to the
- 19 four loans that precludes any possible mitigation of damages.
- 20

21 IV. ISSUES OF LAW

22 The following are the issues of law to be determined by the court:

- 23 1. Whether the transfers of property from Jerry and Mary Ann Becker to JFB
- 24 Properties LLC were fraudulent transfers under Washington state law?
- 25 2. What is the total amount due from Jerry and Mary Anne Becker in principal and
- 26 interest?

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3. What is the amount of attorney fees and costs to which plaintiff is entitled for collection costs according to the terms of the loans?

4. Whether Westsound Bank had any obligation to mitigate damages to Defendants Becker and JFB Properties, LLC?

5. Whether the FDIC had or has any obligation to mitigate damages with respect to Defendants Becker?.

V. EXPERT WITNESSES

(A). Each party shall be limited to 1 expert witness(es) on the issues of fraudulent transfer.

(B). The name(s) and addresses of the expert witness(es) to be used by each party at the trial and the issue upon which each will testify is:

(1). On behalf of plaintiffs:

(a). Tony Leung

Corporate Advisory Associates

1001 Fourth Ave, Suite 3810

Seattle, WA 98101; Mr. Leung is a chartered financial analyst, and an accredited senior appraiser. He will testify regarding Plaintiff's fraudulent transfer claim, in particular but not limited to issues relating to Defendants' solvency at the time the challenged transfers were made.

(b). Plaintiff reserves the right to call fact witnesses as expert witnesses to the extent their education, training and/or work experience qualifies them to give expert testimony.

(c). Plaintiff reserves the right to expert witnesses any persons identified by any other party to this action.

(2). On behalf of defendants:

(a). No experts disclosed or identified.

**JOINT PRETRIAL ORDER
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VI. OTHER WITNESSES

(A). On behalf of plaintiff:

(1). Kevin Leach

2331 E. Saint Andrews Dr. N,

Shelton, WA 98585-7549; will testify concerning the current amounts due on the loans that are the subject matter of this lawsuit loans.

(2). Brett T. Green

9040 NW Anderson Hill Rd

Silverdale WA 98383; possible witness concerning defendants' loan agreements with Westsound and the current amounts due on those loans.

(3). Heath B. McLellan

2402 19th Ave Ct. NW,

Gig Harbor WA 98335; possible witness concerning defendants' loan agreements with Westsound and the current amounts due on those loans.

(4). Terry A. Peterson

6170 156th Pl SE

Bellevue, WA 98006; possible witness concerning one or more of the defendants' relationships with Westsound.

(5). Jerry Becker (defendant); will testify concerning defendants' loan

agreements with Westsound and concerning the transfer of properties from Jerry and Mary Ann Becker to JFB Properties LLC.

(6). Mary Ann Becker (defendant); possible witness concerning

defendants' loan agreements with Westsound.

(7). The Plaintiff reserves the right to disclose additional individuals and/or to supplement this disclosure pursuant to FRCP 26(e).

1
2 (B). On behalf of Defendants:

3
4 A. Jennifer Enlow
5 2047 N.W. John Carlson Road
6 Bremerton, WA 98311

7 She is a former Westsound Bank (WSB) employee, a former loan officer, and formerly a
8 part of the Westsound Mortgage Department. She was the loan officer for the Defendants Becker
9 loans and has knowledge of their four loans involved in Case No. 3:09-cv-05476-RJB.

10 B. David Johnson
11 3781 NE Trout Brook Lane
12 Bremerton, WA 98311

13 David Johnson was President of Westsound Bank (WSB) for several years
14 during which the bank was successful and growing. Mr. Johnson was President of WSB when
15 it opened its branch office in Silverdale, WA, in 2001; and continued as President during
16 the development of its substantial mortgage business under its d/b/a Westsound Mortgage
17 that grew to about 30 employees. Mr. Johnson knows information that pertains to
18 (1) Defendants Beckers' loans, and (2) Becker Family Builders Co-Plaintiffs Group's loans,
19 and (3) the banking practices of WSB concerning Defendant Beckers' loans during the
20 time when Westsound Bank had an active mortgage department, which mortgage department
21 was suddenly terminated in late September 2007. Mr. Johnson also has information related
22 to (4) the consent Cease and Desist Order between WSB and the Washington State
23 Department of Financial Institutions (hereinafter WSDFI) and the FDIC issued in about
24 March 2008, (5) the events and investigations and reports by WSDFI and the FDIC that led up
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26

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1 to that Cease and Desist Order, and (6) its relevance to the problems experienced by
2 Defendants Becker with respect to their loans.

3
4
5 C. Jerry Becker, (one of the Defendants)
6 c/o Edward L. Mueller, legal counsel for Plaintiffs.
7 2050 112th Avenue NE, Ste 110
8 Bellevue, WA 98004
9 (425) 457 7600

10 Mr. Becker has knowledge about all aspects of the history of Defendants' loans
11 with Westsound Bank and Defendants' defenses with respect to the claims of Westsound
12 Bank and the FDIC, its receiver, including but not limited to those of Jerry Becker, Mary
13 Ann Becker and JFB Properties, LLC including but not limited to the causes of the defaults,
14 and the failure of Westsound Bank to mitigate damages. .

15 D. Richard Sanders,
16 c/o Edward L. Mueller, legal counsel for Plaintiffs.
17 2050 112th Avenue NE, Ste 110
18 Bellevue, WA 98004
19 (425) 457 7600

20 Richard Sanders has knowledge about the Defendants' loans with WSB and the
21 events that through no fault of Defendants brought about the changes in Westsound Bank's
22 loan administration that caused the alleged defaults, and Westsound Bank's failure to
23 mitigate damages.

24 E.. Shelley Sanders,
25 c/o Edward L. Mueller, legal counsel for Plaintiffs.
26 2050 112th Avenue NE, Ste 110
Bellevue, WA 98004
(425) 457 7600

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1 Shelly Sanders has information about Defendants loans with WSB and the events
2 that that through no fault of Defendants brought about the changes in loan administration
3 that caused the alleged defaults and Westsound Bank's failure to mitigate damages..
4 ..

5
6 F. Matt (Matthew) Templeton,
7 c/o Edward L. Mueller, legal counsel for Plaintiffs.
8 2050 112th Avenue NE, Ste 110
9 Bellevue, WA 98004
(425) 457 7600

10 Matt Templeton has information about Defendants' loans with Westsound Bank and
11 the events that that through no fault of Defendants brought about the changes in loan
12 administration that caused the alleged defaults and Westsound Bank's failure to mitigate
13 damages.

14
15
16 G. Cherie Boyer
17 4929 Alpenglow Dr. NW
Bremerton WA 98312

18 Cherie Boyer is a former management level employee of Westsound Bank,
19 including branch manager at the Silverdale Branch, and a senior construction loan officer.
20 Cherie Boyer has information concerning the administration of Defendant Beckers' loans prior
21 to the closing of the Bank's Mortgage Department in late September 2007 and subsequent to
22 the closing of the Bank's Mortgage Department in late September 2007. She also probably
23 has knowledge of many of the prior loans made by Westsound Bank to Jerry and Mary
24 Ann Becker, and the course of dealing and standard practices of Westsound Bank.
25
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3
4 (1). Formation documents of JFB Properties, LLC H. Veronica Colburn
5 Currier
6 2005 Glenwood Rd. SW
7 Port Orchard WA 98367

8 Veronica Colburn Currier (recently married, prior to which she was known as
9 Veronica Colburn) was a corporate officer (its Secretary) of Westsound Bank (WSB) and a
10 key bank executive responsible for risk management practices of the bank beginning in
11 WSB's early years until years later when WSB was seized by WSDFI and the FDIC was
12 appointed as receiver of WSB. Ms Coburn has the following knowledge: Prior to joining WSB,
13 Ms. Colburn had been an officer and executive at National Bank of Port Orchard. Jerry Becker
14 and his family had done banking business with Veronica Colburn at National Bank of Port
15 Orchard for years, and when she moved to Westsound Bank, Jerry Becker and his family moved
16 their banking business to WSB. Ms Colburn has information about Jerry Becker and his family
17 and their banking relationships that go back many years. Jerry Becker and his family continued
18 their banking through Ms. Colburn when possible. Ms. Colburn has information about the
19 Becker family banking activities at the time she handled their accounts, and may have knowledge
20 of their banking activities after that because of her position as an officer and a lending
21 department executive of the Bank. Ms Colburn-Currier may also have information related to the
22 consent Cease and Desist Order between WSB and WSDFI and the FDIC issued in about March
23 2008, and the events and investigations and reports by WSDFI and the FDIC that led up to that
24 Cease and Desist Order.
25
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1 I. Terry Benish
2 PO Box 5
3 Suquamish WA 98392

4 Terry Benish was hired as vice president and manager of "classified assets" of the
5 Westsound Bank (WSB), and has information pertaining to the Defendants Beckers' various
6 loans, and the efforts of Defendants Becker to work things out with WSB, including an
7 agreement for short sale on the property at 21416 Indianola Road N.E. (that would have
8 mitigated everyone's damages, and probably WSB's potential losses on the Becker Indianola
9 loans. A few months after Mr. Benish was hired, his employment was suddenly terminated by
10 WSB, and other WSB representatives refused to keep the agreements made by Mr. Benish,
11 including the short sale that had been worked out between WSB (acting through Mr. Benish) and
12 the Defendant Jerry Becker.
13

14 J. Garrett Brady
15 (address unknown at this time.)

16 Garrett Brady is a former employee of Westsound Bank (WSB) and was employed by
17 WSB as a construction loan coordinator. Garrett Brady has knowledge of Defendants Beckers'
18 loans during the time he worked for WSB. Mr. Brady also would have knowledge of the
19 standardized practices of construction loan administration used by WSB in conjunction with Co-
20 Plaintiffs and Defendants Beckers' loans.
21

22 K. Steve Brown
23 (address unknown at this time.)

24 Steve Brown is a former employee of Westsound Bank (WSB) and preceded Garret
25 Brady as a construction loan coordinator. Defendants Becker had occasion to work with Mr.
26

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1 Brown concerning their loans. Steve Brown has knowledge of Defendant Beckers' loans during
 2 the time he worked for WSB. Mr. Brown also has knowledge of the standardized practices of
 3 construction loan administration used by WSB in conjunction with Co-Plaintiffs and Defendant
 4 Beckers' loans.

5
 6 L. Lana Heike,
 7 7888 Crystal Manor Lane, N.W.
 8 Silverdale, WA 98383

9 Ms Heike was an employee of Westsound Bank in charge of marketing and public
 10 relations, and as such has knowledge of the adverse effects of the termination of the entire
 11 mortgage department in September 2007 on the functioning of the bank, and particularly its loan
 12 administration. She also has knowledge of the internal relationships in Westsound Bank that
 13 resulted in the refusal of some executives of the bank to approve procedures that would have
 14 mitigated damages to both the borrowers from the bank and the bank.

15 16 VII. EXHIBITS

17 (A). Admissibility stipulated:

18 Plaintiffs' Exhibits

19 Defendant's Exhibits

20 (B). Authenticity stipulated, admissibility disputed:

21 Plaintiffs' Exhibits

22 (1). Becker loan agreements

23 (2). Becker credit documents

24 (3). Documents pertaining to the transfer of property located at 514 and
 25 516 Sheridan Road, Bremerton WA
 26

Defendants' Exhibits

(A-1). List of Prior Loans

(C). Authenticity and admissibility disputed:

Plaintiff's Exhibits:


Defendants' Exhibits:

(A-2) Written communications regarding short sales between Defendant Jerry Becker and representatives of Westsound Bank.

(A-3) Notices of non-judicial foreclosure sent on behalf of Westsound Bank.

(A-4) Other written communications and financial statements delivered to Westsound Bank by Defendants Becker

VIII. ACTION BY THE COURT

(A). This case is scheduled for trial before the court on November ²²8, 2010. 

(B). Trial briefs shall be submitted to the court on or before October 29, 2010.

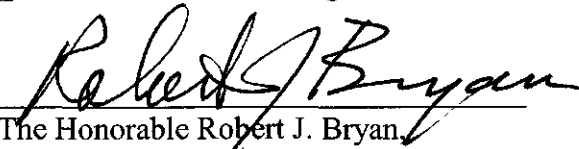
(C). On April 24, 2009, the Honorable M. Karlynn Haberly, judge of the Washington State Superior Court for Kitsap County, filed a memorandum opinion finding that Westsound Bank was entitled to summary judgment on its claims and to summary judgment of dismissal on defendants' counterclaims.

(D). On June 14, 2010, this Court issued an Order Granting Plaintiff's Motion to Compel Discovery Responses. The order was signed by the Honorable Robert J. Bryan, United States District Judge.


1 (E). On August 23rd, 2010, this Court issued an Order denying defendants'
2 motion for reconsideration of the summary judgment order. The order was signed by the
3 Honorable Robert J. Bryan.

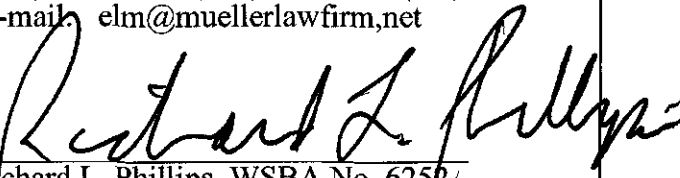
4 This order has been approved by the parties as evidenced by the signatures of their
5 counsel. This order shall control the subsequent course of the action unless modified by a
6 subsequent order. This order shall not be amended except by order of the court pursuant to
7 agreement of the parties or to prevent manifest injustice.

8 Dated this 29th day of Oct 2010 at Seattle, Washington.

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10 
11 The Honorable Robert J. Bryan
12 United States District Judge
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By 
Edward L. Mueller, WSBA #264
Attorney for Defendants, Jerry and Mary Ann
Becker
2050 112th Avenue N.E. Suite 110
Bellevue, Washington 98004
(425) 457-7600; (425) 457-7801 (fax)
e-mail: elm@muellerlawfirm.net

By 
Richard L. Phillips, WSBA No. 6252/
Roman S. Dixon, WSBA No. 36369
Attorneys for Plaintiff FDIC as
Receiver for Westsound Bank
The Gaitán Group PLLC
3131 Elliot Avenue, Suite 700
Seattle, Washington 98121
Telephone: (206) 346-6000
Fax: (206) 346-6019
E-mail(s): rphillips@gaitan-law.com
rdixon@gaitan-law.com
service@gaitan-law.com

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A PROFESSIONAL LIMITED LIABILITY COMPANY
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